



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/173079

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly issued a tax intercept notice to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 20, 2014, the Petitioner filed an application with the agency and reported her address on [REDACTED], Milwaukee. She reported that she did not intend to reside in Wisconsin.

3. On February 21, 2014, the agency denied the Petitioner's application because she was not a Wisconsin resident.
4. On March 5, 2014, the agency received an alert that the Petitioner was receiving FS benefits from the State of Tennessee.
5. On March 6, 2014, the agency received a written statement from the Petitioner's grandmother that the Petitioner was residing with her on [REDACTED], Milwaukee.
6. On March 7, 2014, the agency issued a Notice of Decision to the Petitioner at her address on [REDACTED], Milwaukee informing her that she was approved to receive Wisconsin FS benefits.
7. On March 19, 2014, the Petitioner contacted the agency to report that she was moving to Tennessee. The agency closed the Petitioner's FS case.
8. On March 20, 2014, the Petitioner filed a new application with the agency requesting FS and healthcare benefits and reported her address on [REDACTED], Milwaukee. The agency re-opened the Petitioner's case.
9. On March 24, 2014, the agency issued a Notice of Decision to the Petitioner on [REDACTED], Milwaukee informing her that she was approved for FS benefits effective April 1, 2014.
10. On August 28, 2014, the agency received an alert that the Petitioner received FS benefits from the State of Tennessee for the period of February, 2014 – July, 2014.
11. On August 29, 2014 the agency issued a FoodShare Overpayment Notice and worksheets to the Petitioner at her [REDACTED], Milwaukee address informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$1,582 for the period of April 1, 2014 – August 31, 2014 due to non-client error based on duplicate issuance of benefits with another state. The notice also informed the Petitioner of the right to appeal the agency's determination by requesting a hearing with the Division of Hearings and Appeals within 90 days of the date of the notice.
12. On September 3, 2014, the agency issued a Repayment Agreement to the Petitioner at the [REDACTED], Milwaukee address.
13. On September 2, 2014, the agency intercepted \$1,286 from Petitioner's taxes for repayment of the FS overissuance.
14. On October 2, 2014, November 4, 2014 and December 2, 2014, the agency issued dunning notices to the Petitioner at her address on [REDACTED], Milwaukee.
15. On January 16, 2015, the agency issued a tax intercept notice to the Petitioner to the address on [REDACTED], Milwaukee. The notice informed the Petitioner that the agency may intercept tax refunds for an unpaid public assistance debt of \$296. The notice informed the Petitioner of the right to appeal this determination by requesting a hearing within 30 days of the date of the notice with the Division of Hearings and Appeals.
16. From October 1, 2015 – April 30, 2016, the agency recouped \$144 from Petitioner's Wisconsin FS allotment for repayment of the FS overissuance.
17. On March 23, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. See 7 C.F.R., sec. 273.15(g). An appeal concerning a tax intercept must be filed within 30 days of the date of that action. Wis. Stat. § 49.85.

In this case, the Petitioner disputes both the overpayment action as well as the tax intercept action. She testified that she did not receive the notices of overpayment or tax intercept and had no knowledge of these actions until recently. She testified that, at the time the notices were issued, she was either living in Tennessee or was incarcerated. Specifically, she testified that she was living in Tennessee from March, 2014 – June, 2014. From July, 2014 – September, 2015, she states she was incarcerated.

The Petitioner concedes that she was back and forth between Tennessee and Wisconsin in 2013 and early 2014. She stated that she moved to Tennessee in November, 2013 and opened a benefits case there. She testified that she returned to Wisconsin in February, 2014 and filed for benefits here. She decided to move back to Tennessee and did so in April, 2014. She stated that she then returned to Wisconsin in June, 2014. The evidence is consistent with the Petitioner's testimony. She filed for FS benefits in Wisconsin in February, 2014. She advised the agency that she had been receiving benefits in Tennessee. On March, 19, 2014, she advised the agency that she was returning to Tennessee. However, for an unknown reason, she filed another application with the agency on March 20, 2014 reporting her address on [REDACTED], Milwaukee. As a result, the agency issued a Notice to her at that address advising her that she would receive FS benefits effective April 1, 2014. She continued to receive FS benefits from Wisconsin through August, 2014 and the transaction history indicates she used her Wisconsin benefits in Tennessee in May, 2014. Petitioner did not report to the agency when she was incarcerated in July, 2014.

Based on the evidence, I conclude the agency properly issued the notice of overpayment, the repayment agreement, the dunning notices and the tax intercept notice to the Petitioner's last-known address on [REDACTED], Milwaukee. The Petitioner's testimony that she was unaware of the overpayment action is not credible based on the fact that most of the overpayment has already been recouped from the Petitioner's FS allotment and previous tax intercept action.

Therefore, the Petitioner's appeal on March 23, 2016 is untimely with regard to the overpayment action of August 29, 2014 and untimely with regard to the tax intercept action of January 16, 2015. No jurisdiction exists for DHA to consider the merits of the case.

CONCLUSIONS OF LAW

The Petitioner's appeal on March 23, 2016 is untimely with regard to the overpayment action of August 29, 2014 and untimely with regard to the tax intercept action of January 16, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of May, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 19, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit